



4510-29-P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Proposed Exemptions from Certain Prohibited Transaction
Restrictions

AGENCY: Employee Benefits Security Administration, Labor

ACTION: Notice of Proposed Exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) and/or the Internal Revenue Code of 1986 (the Code). This notice includes the following proposed exemptions: **D-11496, Northwestern Mutual Investment Services, Inc.; D-11773, The Delaware County Bank and Trust Company Employee 401(k) Retirement Plan (the Plan); D-11780, The Home Savings and Loan Company 401(k) Savings Plan (the Plan), United Community Financial Corporation (UCFC) and the Home Savings and Loan Company (Home Savings); and D-11756, Liberty Media 401(k) Savings Plan (the Plan).**

DATES: All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions,

unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this Federal Register Notice.

ADDRESSES: Comments and requests for a hearing should state: (1) the name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing. All written comments and requests for a hearing (at least three copies) should be sent to the Employee Benefits Security Administration (EBSA), Office of Exemption Determinations, Room N-5700, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Attention: Application No. _____, stated in each Notice of Proposed Exemption. Interested persons are also invited to submit comments and/or hearing requests to EBSA via e-mail or FAX. Any such comments or requests should be sent either by e-mail to: moffitt.betty@dol.gov, or by FAX to (202) 219-0204 by the end of the scheduled comment period. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of the Employee Benefits Security Administration, U.S. Department of

Labor, Room N-1513, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

WARNING: All comments will be made available to the public. Do not include any personally identifiable information (such as Social Security number, name, address, or other contact information) or confidential business information that you do not want publicly disclosed. All comments may be posted on the Internet and can be retrieved by most Internet search engines.

SUPPLEMENTARY INFORMATION:

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the Federal Register. Such notice shall include a copy of the notice of proposed exemption as published in the Federal Register and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR Part 2570, Subpart B (76 FR 66637, 66644, October 27,

2011).¹ Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

¹ The Department has considered exemption applications received prior to December 27, 2011 under the exemption procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990).

Northwestern Mutual Investment Services, Inc.

Located in Milwaukee, Wisconsin

[Exemption Application No. **D-11496**]

PROPOSED EXEMPTION

The Department is considering granting an exemption under the authority of section 408(a) of the Employee Retirement Income Security Act of 1974, as amended (ERISA or the Act), and section 4975(c)(2) of the Internal Revenue Code of 1986, as amended (the Code), and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (76 FR 66637, 66644, October 27, 2011).^{**2**}

SECTION I. TRANSACTIONS INVOLVING PLANS DESCRIBED IN BOTH TITLE I AND TITLE II OF ERISA

If the proposed exemption is granted, the restrictions of section 406(a)(1)(A), (B), and (D) and section 406(b)(1) and (2) of ERISA, and the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A), (B), (D), and (E) of the Code, shall not apply, effective February 1, 2008, to the following transactions, if the conditions set forth in Section III have been met:

^{**2**} For purposes of this proposed exemption, references to section 406 of ERISA should be read to refer as well to the corresponding provisions of section 4975 of the Code.

(a) The sale or exchange of an Auction Rate Security (as defined in Section IV(b)) by a Plan (as defined in Section IV(h)) to the Sponsor (as defined in Section IV(g)) of such Plan; or

(b) A lending of money or other extension of credit to a Plan in connection with the holding of an Auction Rate Security by the Plan, from: (1) Northwestern Mutual Investment Services, Inc. or an affiliate (Northwestern Mutual); (2) an Introducing Broker (as defined in Section IV(f)); or (3) a Clearing Broker (as defined in Section IV(d)); where the loan is: (i) Repaid in accordance with its terms; and (ii) guaranteed by the Plan Sponsor.

SECTION II. TRANSACTIONS INVOLVING PLANS DESCRIBED IN TITLE II OF ERISA ONLY

If the proposed exemption is granted, the sanctions resulting from the application of section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A), (B), (D), and (E) of the Code, shall not apply, effective February 1, 2008, to the following transactions, if the conditions set forth in Section III have been met:

(a) The sale or exchange of an Auction Rate Security by a Title II Only Plan (as defined in Section IV(i)) to the Beneficial Owner (as defined in Section IV(c)) of such Plan; or

(b) A lending of money or other extension of credit to a Title II Only Plan in connection with the holding of an Auction Rate Security by the Title II Only Plan, from: (1) Northwestern Mutual; (2) an Introducing Broker; or (3) a Clearing Broker; where the loan is: (i) Repaid in accordance with its terms and; (ii) guaranteed by the Beneficial Owner.

SECTION III. CONDITIONS

(a) Northwestern Mutual acted as a broker or dealer, non-bank custodian, or fiduciary in connection with the acquisition or holding of the Auction Rate Security that is the subject of the transaction described in Section I or II of this proposal;

(b) For transactions involving a Plan (including a Title II Only Plan) not sponsored by Northwestern Mutual for its own employees, the decision to enter into the transaction is made by a Plan fiduciary who is Independent (as defined in Section IV(e)) of Northwestern Mutual. Notwithstanding the foregoing, an employee of Northwestern Mutual who is the Beneficial Owner of a Title II Only Plan may direct such Plan to engage in a transaction described in Section II, if all of the other conditions of this Section III have been met;

(c) The last auction for the Auction Rate Security was unsuccessful;

(d) The Plan does not waive any rights or claims in connection with the sale or loan as a condition of engaging in the above-described transaction;

(e) The Plan does not pay any fees or commissions in connection with the transaction;

(f) The transaction is not part of an arrangement, agreement or understanding designed to benefit a party in interest;

(g) With respect to any sale described in Section I(a) or Section II(a):

(1) The sale is for no consideration other than cash payment against prompt delivery of the Auction Rate Security; and

(2) For purposes of the sale, the Auction Rate Security is valued at par, plus any accrued but unpaid interest;

(h) With respect to an in-kind exchange described in Section (I)(a) or Section II(a), the exchange involves the transfer by a Plan of an Auction Rate Security in return for a Delivered Security, as such term is defined in Section IV(j), where:

(1) The exchange is unconditional;

(2) For purposes of the exchange, the Auction Rate Security is valued at par, plus any accrued but unpaid interest;

(3) The Delivered Security is valued at fair market value,

as determined at the time of the in-kind exchange by a third party pricing service or other objective source;

(4) The Delivered Security is appropriate for the Plan and is a security that the Plan is otherwise permitted to hold under applicable law;³ and

(5) The total value of the Auction Rate Security (i.e., par plus any accrued but unpaid interest) is equal to the fair market value of the Delivered Security;

(i) With respect to a loan described in Section I(b) or II(b):

(1) The loan is documented in a written agreement containing all of the material terms of the loan, including the consequences of default;

(2) The Plan does not pay an interest rate that exceeds one of the following three rates as of the commencement of the loan:

³ The Department notes that the Act's general standards of fiduciary conduct also would apply to the transactions described herein. In this regard, section 404 requires, among other things, that a fiduciary discharge his duties respecting a plan solely in the interest of the plan's participants and beneficiaries and in a prudent manner. Accordingly, a plan fiduciary must act prudently with respect to, among other things: (1) The decision to exchange an Auction Rate Security for a Delivery Security; and (2) the negotiation of the terms of such exchange (or a cash sale or loan described above), including the pricing of such securities. The Department further emphasizes that it expects plan fiduciaries, prior to entering into any of the proposed transactions, to fully understand the risks associated with these types of transactions following disclosure by Northwestern Mutual of all relevant information.

- (A) The coupon rate for the Auction Rate Security;
- (B) The Federal Funds Rate; or
- (C) The Prime Rate;
- (3) The loan is unsecured; and
- (4) The amount of the loan is not more than the total par value of the Auction Rate Securities held by the Plan.

SECTION IV. DEFINITIONS

(a) The term "affiliate" means: Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person;

(b) The term "Auction Rate Security" or "ARS" means a security:

(1) That is either a debt instrument (generally with a long-term nominal maturity) or preferred stock; and

(2) With an interest rate or dividend that is reset at specific intervals through a Dutch auction process;

(c) The term "Beneficial Owner" means: The individual for whose benefit the Title II Only Plan is established and includes a relative or family trust with respect to such individual;

(d) The term "Clearing Broker" means: A member of a securities exchange that acts as a liaison between an investor and a clearing corporation and that helps to ensure that a trade

is settled appropriately, that the transaction is successfully completed and that is responsible for maintaining the paper work associated with the clearing and executing of a transaction;

(e) The term "Independent" means a person who is: (1) Not Northwestern Mutual or an affiliate; and (2) not a relative (as defined in ERISA section 3(15)) of the party engaging in the transaction;

(f) The term "Introducing Broker" means: A registered broker that is able to perform all the functions of a broker except for the ability to accept money, securities, or property from a customer;

(g) The term "Sponsor" means: A plan sponsor as described in section 3(16)(B) of the Act and any Affiliates;

(h) The term "Plan" means: Any plan described in section 3(3) of the Act and/or section 4975(e)(1) of the Code;

(i) The term "Title II Only Plan" means: Any plan described in section 4975(e)(1) of the Code which is not an employee benefit plan covered by Title I of ERISA;

(j) The term "Delivered Security" means a security that is: (1) Listed on a national securities exchange (excluding OTC Bulletin Board-eligible securities and Pink Sheets-quoted securities); or (2) a U.S. Treasury obligation; or (3) A fixed income security that has a rating at the time of the exchange

that is in one of the two highest generic rating categories from an independent nationally recognized statistical rating organization (e.g., a highly rated municipal bond or a highly rated corporate bond); or (4) A certificate of deposit insured by the Federal Deposit Insurance Corporation. Notwithstanding the above, the term "Delivered Security" shall not include any Auction Rate Security, or any related Auction Rate Security, including derivatives or securities materially comprised of Auction Rate Securities or any illiquid securities.

SUMMARY OF FACTS AND REPRESENTATIONS

1. The Applicant is Northwestern Mutual Investment Services, Inc. and its affiliates (hereinafter, either Northwestern Mutual or the Applicant). Northwestern Mutual is a broker-dealer wholly owned by Northwestern Mutual Life Insurance Company, whose businesses include the provision of investment advisory and other services to IRAs and pension, profit sharing, and 401(k) plans qualified under section 401(a) of the Code. Among other things, Northwestern Mutual acts as a broker and dealer with respect to the purchase and sale of securities, including Auction Rate Securities (or ARS). The Applicant describes ARS and the arrangement by which ARS are bought and sold as follows. ARS constitute securities (issued as debt or

preferred stock) with an interest rate or dividend that is reset at periodic intervals pursuant to a process called a Dutch Auction. Investors submit orders to buy, hold, or sell a specific ARS to a broker-dealer selected by the entity that issued the ARS. The broker-dealers, in turn, submit all of these orders to an auction agent. The auction agent's functions include collecting orders from all participating broker-dealers by the auction deadline, determining the amount of securities available for sale, and organizing the bids to determine the winning bid. If there are any buy orders placed into the auction at a specific rate, the auction agent accepts bids with the lowest rate above any applicable minimum rate and then successively higher rates up to the maximum applicable rate, until all sell orders and orders that are treated as sell orders are filled. Bids below any applicable minimum rate or above the applicable maximum rate are rejected. After determining the clearing rate for all of the securities at auction, the auction agent allocates the ARS available for sale to the participating broker-dealers based on the orders they submitted. If there are multiple bids at the clearing rate, the auction agent will allocate securities among the bidders at such rate on a pro-rata basis.

2. The Applicant states that Northwestern Mutual is permitted, but not obligated, to submit orders in auctions for

its own account either as a bidder or a seller and routinely does so in the ARS market in its sole discretion. Northwestern Mutual may routinely place one or more bids in an auction for its own account to acquire ARS for its inventory, to prevent: (1) A failed auction (i.e., an event where there are insufficient clearing bids which would result in the auction rate being set at a specified rate); or (2) an auction from clearing at a rate that Northwestern Mutual believes does not reflect the market for the particular ARS being auctioned.

3. The Applicant states that for many ARS, Northwestern Mutual has been appointed by the issuer of the securities to serve as a dealer in the auction and is paid by the issuer for its services. Northwestern Mutual is typically appointed to serve as a dealer in the auctions pursuant to an agreement between the issuer and Northwestern Mutual. That agreement provides that Northwestern Mutual will receive from the issuer auction dealer fees based on the principal amount of the securities placed through Northwestern Mutual.

4. The Applicant states further that Northwestern Mutual may share a portion of the auction rate dealer fees it receives from the issuer with other broker-dealers that submit orders through Northwestern Mutual, for those orders that Northwestern Mutual successfully places in the auctions. Similarly, with respect to

ARS for which broker-dealers other than Northwestern Mutual act as dealer, such other broker-dealers may share auction dealer fees with Northwestern Mutual for orders submitted by Northwestern Mutual.

5. According to the Applicant, since February 2008, a minority of auctions have cleared, particularly involving municipalities. As a result, Plans holding ARS may not have sufficient liquidity to make benefit payments, mandatory payments and withdrawals and expense payments when due.⁴

6. The Applicant represents that, in certain instances, Northwestern Mutual may have previously advised or otherwise caused a Plan to acquire and hold an ARS and thus may be considered a fiduciary to the Plan, so that a sale between a Plan and its sponsor or an IRA and its Beneficial Owner violates section 406(a)(1)(A) and (D), and 406(b)(1) and (2) of ERISA and/or corresponding provisions of the Code; in addition, a loan to the Plan by Northwestern Mutual may violate section

⁴ The Department notes that Class Exemption 80-26 (45 FR 28545 (Apr. 29, 1980), as amended at 71 FR 17917 (Apr. 7, 2006)) permits interest-free loans or other extensions of credit from a party in interest to a Plan if, among other things, the proceeds of the loan or extension of credit are used only--(1) for the payment of ordinary operating expenses of the Plan, including the payment of benefits in accordance with the terms of the Plan and periodic premiums under an insurance or annuity contract, or (2) for a purpose incidental to the ordinary operation of the Plan.

406(a)(1)(B) and (D), and 406(b)(1) and (2) of ERISA.⁵ The Applicant is therefore requesting relief for the following transactions, involving all employee benefit plans covered under both Title I and Title II of ERISA: (1) The sale or exchange of an ARS from a Plan to the Plan's Sponsor; or (2) a lending of money or other extension of credit to a Plan in connection with the holding of an ARS from: Northwestern Mutual, an Introducing Broker, or a Clearing Broker, where the subsequent repayment of the loan is made in accordance with its terms and is guaranteed by the Plan Sponsor.

7. The Applicant is requesting similar relief for plans covered only by Title II of ERISA. In this regard, the Applicant is requesting relief for: (1) The sale or exchange of an ARS from a Title II Only Plan to the Beneficial Owner of such Plan; or (2) a lending of money or other extension of credit to a Title II Only Plan in connection with the holding of an ARS from: Northwestern Mutual, an Introducing Broker, or a Clearing Broker, where the subsequent repayment of the loan is made in accordance with its terms and is guaranteed by the Beneficial Owner.

8. The Applicant represents that the proposed transactions are in the interests of the Plans. In this regard, the Applicant

⁵ The relief contained in this proposed exemption does not extend to the fiduciary provisions of section 404 of the Act.

states that the exemption, if granted, will provide Plan fiduciaries with liquidity notwithstanding changes that occurred in the ARS markets. The Applicant also notes that, other than for Plans sponsored by the Applicant, the decision to enter into a transaction described herein will be made by a Plan fiduciary who is independent of Northwestern Mutual.

9. The proposed exemption contains a number of safeguards designed to protect the interests of each Plan. With respect to the sale of an ARS by a Plan, the Plan must receive cash equal to the par value of the security, plus any accrued interest. The sale must also be unconditional, other than being for payment against prompt delivery. For in-kind exchanges covered by the proposed exemption, the security delivered to the Plan (i.e., the Delivered Security) must be: (1) listed on a national securities exchange (excluding OTC Bulletin Board-eligible securities and Pink Sheets-quoted securities); or (2) a U.S. Treasury obligation; or (3) a fixed income security that has a rating at the time of the exchange that is in one of the two highest generic rating categories from an independent nationally recognized statistical rating organization (e.g., a highly rated municipal bond or a highly rated corporate bond); or (4) a certificate of deposit insured by the Federal Deposit Insurance Corporation. The Delivered Security must also be appropriate for

the Plan, and a security that the Plan is permitted to hold under applicable law. The proposed exemption further requires that the Delivered Security be valued at its fair market value, as determined at the time of the exchange from a third party pricing service or other objective source, and must equal the total value of the ARS being exchanged (i.e., par value, plus any accrued interest).

10. With respect to a loan to a Plan holding an ARS, such loan must be documented in a written agreement containing all of the material terms of the loan, including the consequences of default. Further, the Plan may not pay an interest rate that exceeds one of the following three rates as of the commencement of the loan: The coupon rate for the ARS; the Federal Funds Rate; or the Prime Rate. Additionally, such loan must be unsecured and for an amount that is no more than the total par value of ARS held by the affected Plan.

11. Additional conditions apply to each transaction covered by the exemption, if granted. Among other things, the Plan may not pay any fees or commissions in connection with the transaction and the transaction may not be part of an arrangement, agreement, or understanding designed to benefit a party in interest. The exemption expressly prohibits any waiver of rights or claims by a Plan in connection with the sale or

exchange of an ARS by a Plan, or a lending of money or other extension of credit to a Plan holding an ARS.

12. In summary, the Applicant represents that the transactions described herein satisfy the statutory criteria set forth in section 408(a) of the Act and section 4975(c)(2) of the Code because:

(1) Any sale will be:

(A) For no consideration other than cash payment against prompt delivery of the ARS; and

(B) At par, plus any accrued but unpaid interest;

(2) Any in-kind exchange will be unconditional, other than being for payment against prompt delivery, and will involve Delivered Securities that are:

(A) Appropriate for the Plan;

(B) Listed on a national securities exchange (but not OTC Bulletin Board-eligible securities and Pink Sheets-quoted securities); U.S. Treasury obligations; fixed income securities; or certificates of deposit; and

(C) Securities that the Plan is permitted to hold under applicable law; and,

(3) Any loan will be:

(A) Documented in a written agreement containing all of the material terms of the loan, including the consequences of

default;

(B) At an interest rate not in excess of: the coupon rate for the ARS, the Federal Funds Rate, or the Prime Rate;

(C) Unsecured; and

(D) For an amount that is not more than the total par value of ARS held by the affected Plan.

NOTICE TO INTERESTED PERSONS

The Applicant represents that the potentially interested participants and beneficiaries cannot all be identified and therefore the only practical means of notifying such participants and beneficiaries of this proposed exemption is by the publication of this notice in the Federal Register. Comments and requests for a hearing must be received by the Department not later than 45 days from the date of publication of this notice of proposed exemption in the Federal Register.

All comments will be made available to the public. **Warning:** Do not include any personally identifiable information (such as name, address, or other contact information) or confidential business information that you do not want publicly disclosed. All comments may be posted on the Internet and can be retrieved by most Internet search engines.

For Further Information Contact: Scott Ness of the Department,
telephone (202) 693-8561. (This is not a toll-free number.)

The Delaware County Bank and Trust Company Employee 401(k)
Retirement Plan (the Plan)
Located in Lewis Center, OH
[Application No. D-11773]

PROPOSED EXEMPTION

The Department is considering granting an exemption under the authority of section 408(a) of the Employee Retirement Income Security Act of 1974, as amended (ERISA or the Act), and section 4975(c)(2) of the Internal Revenue Code of 1986, as amended (the Code), and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (76 FR 66637, 66644, October 27, 2011).⁶

Section I: Transactions

If the proposed exemption is granted, the restrictions of sections 406(a)(1)(E), 406(a)(2), 406(b)(1), 406(b)(2) and 407(a)(1)(A) of the Act, and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(E) of the Code, shall not apply:

(a) To the acquisition of certain subscription rights (the

⁶ For purposes of this proposed exemption, references to the provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

Stock Rights) by the Plan in connection with an offering (the Offering) of shares of common stock (the Stock) of DCB Financial Corp (DCBF), a party in interest with respect to the Plan; and

(b) To the holding of the Stock Rights received by the Plan during the subscription period of the Offering; provided that the conditions set forth in Section II of this proposed exemption were satisfied.

Section II: Conditions

(a) The acquisition of the Stock Rights by the Plan was made pursuant to terms that were the same for all shareholders of DCBF Stock;

(b) The acquisition of the Stock Rights by the Plan resulted from an independent, corporate act of DCBF;

(c) Each shareholder of the Stock, including the Plan, received the same proportionate number of Stock Rights, and this proportionate number of Stock Rights was based on the number of shares of Stock held by each such shareholder;

(d) The Stock Rights were acquired pursuant to, and in accordance with, provisions under the Plan for individually directed investments of the accounts of the individual participants, a portion of whose accounts in the Plan held the stock (the Invested Participants);

(e) The decisions with regard to the holding and disposition of the Stock Rights by the Plan were made by the Invested Participants who received the Stock Rights in their Plan accounts; and

(f) No brokerage fees, no subscription fees and no other charges were paid by the Plan with respect to the acquisition and holding of the Stock Rights, and no brokerage fees, no commissions and no other monies were paid by the Plan to any broker in connection with the exercise of the Stock Rights to acquire DCBF shares.

EFFECTIVE DATE: If granted, this proposed exemption will be effective from October 16, 2012, to November 26, 2012.

SUMMARY OF FACTS AND REPRESENTATIONS⁷

Parties to the Covered Transaction

1. DCB Financial Corp (DCBF or the Applicant) is a financial holding company organized under Ohio law. DCBF is currently engaged in the financial services business through its wholly-owned subsidiary, Delaware County Bank & Trust Company

⁷ The Summary of Facts and Representations is based on the Applicant's representations and does not represent the views of the Department, unless indicated otherwise.

(the Bank), and two non-bank subsidiaries, DCB Insurance Services, LLC and DCB Title Services, LLC. The Bank provides customary retail and commercial banking services through its main office and 14 branch offices located in Delaware, Ohio and surrounding counties.

2. The Delaware County Bank and Trust Company 401(k) Retirement Plan (the Plan), originally effective on January 1, 1991, is a qualified profit sharing plan under Section 401(a) of the Code. The Plan has adopted a prototype plan which received a favorable opinion letter from the Internal Revenue Service on March 31, 2008. The Plan sponsor believes that the Plan, as amended and restated, operates in compliance with the applicable requirements of the Code. In addition, the Applicant states that the Bank is the Plan's trustee (the Trustee) and custodian.⁸

⁸ The Applicant represents that the Bank serves as the Trustee and custodian of the Plan in compliance with section 408(b)(2) of the Act and the regulations thereunder. Furthermore, according to the Applicant, neither the Bank nor any of its affiliates receives any direct or indirect compensation in connection with its provision of such services to the Plan. The Department notes that DOL regulation 29 CFR 2550.408b-2(e)(2) provides that a fiduciary does not engage in an act described in Section 406(b)(1) of the Act if the fiduciary does not use any of the authority, control or responsibility that makes him a fiduciary to cause a plan to pay additional fees for a service furnished by a person in which the fiduciary has an interest that may affect the exercise of his judgment as a fiduciary. It is also the Department's view that generally a fiduciary's decision to retain itself or an affiliate as a service provider who does not charge fees of any kind for the provision of such services will not involve an adversity of interests as contemplated by section

3. All employees of the Bank and the Bank's affiliates, DCB Insurance Services, LLC and DCB Title Services, LLC, are eligible to participate in the Plan. As of October 16, 2012, the Plan had 124 participants and total assets of approximately \$4,096,517.

4. The Plan allows participants to direct the investment of their Plan account balances amongst a variety of 19 pre-selected investment options, including any combination of mutual funds and DCBF common stock (DCBF Stock). The Applicant represents that DCBF Stock constitutes "qualifying employer securities" under section 407(d)(5) of the Act. The fair market value of the assets of the Plan invested in DCBF Stock, as reflected in the Plan's most recent financial statements, dated August 29, 2012 (the Record Date), was approximately \$383,049, held among the accounts of 18 Plan participants, as of the Record Date. The approximate percentage of the fair market value of the Plan's total assets, represented by investments in DCBF Stock was 9.35%.

5. According to the Applicant, the DCBF Stock is quoted on the Over-the-Counter-Bulletin Board (the OTCBB) and is not listed on the NASDAQ or a national stock exchange. The Applicant

406(b)(2) of the Act. Accordingly, the decision by the Bank to act as the Trustee and custodian of the Plan, would not appear, in itself, to raise issues under section 406(b)(1) or (b)(2) of the Act.

represents that investors who wish to buy or sell DCBF shares will contact a "market maker" who will link potential buyers and sellers.⁹ These privately facilitated transactions are then reported to the NASDAQ OTCBB.

Background to the Offering

6. The Applicant represents that, like many banks, particularly banks with significant lending operations, the Bank was impacted by challenges faced by the real estate market, and federal banking regulators were engaged in discussions with all regulated financial institutions. On June 29, 2010, DCBF entered into a memorandum of understanding (the MOU) with the Federal Reserve Bank of Cleveland (the Federal Reserve), providing that DCBF may not declare or pay cash dividends to its shareholders, repurchase any of its shares, or incur or guarantee any debt without the prior approval of the Federal Reserve.

7. On October 28, 2010, the Bank entered into a written agreement (the Written Agreement) with the Ohio Division of Financial Institutions (the Ohio Division) and a consent order (the Consent Order) with the Federal Deposit Insurance

⁹ The Applicant represents that the following firms presently make a market in DCBF Stock: Sweney Cartwright & Company, Columbus, OH; Howe, Barnes, Hoefer & Arnett, Inc., Chicago, IL; and Stifel, Nicolaus & Company, Incorporated, St. Louis, MO.

Corporation (the FDIC) addressing matters pertaining to, among other things, strengthening the Bank's capital position and submitting a funding contingency plan for the Bank that identified available sources of liquidity. The Applicant represents that the Written Agreement and Consent Order also provide that the Bank may not declare or pay dividends to DCBF without the prior approval of the Ohio Division and the FDIC. The Written Agreement and Consent Order also specifically require that the Bank, among other things, enhance bank liquidity.

8. In response to the MOU and the Written Agreement, DCBF management and the Board of Directors of DCBF (the Board) chose to raise equity capital through a rights offering for DCBF Stock (the Rights Offering) to improve the Bank's capital position, to retain additional capital at DCBF, and to give shareholders the opportunity to limit ownership dilution by buying additional common shares.¹⁰ As noted above, the Plan holds DCBF Stock which is subject to the investment direction of Plan participants. Therefore, according to the Applicant, DCBF

¹⁰ The Applicant states that DCBF has worked with Sandler O'Neill, a nationally recognized investment consultant, to evaluate various options for raising capital including strategic combinations with other institutions, public offerings, and the Rights Offering. Based on advice from this investment consultant, DCBF determined that the Rights Offering was the best opportunity to raise the necessary capital.

determined it was in the interests of the Plan and its participants to allow the Plan to participate in the Rights Offering to the same extent as other shareholders, in part so that Plan participants holding DCBF Stock in their Plan accounts could avoid having such DCBF Stock become diluted as a result of the Rights Offering.

The Terms of the Offering

9. The Applicant represents that all shareholders of record as of 5:00 p.m. on the Record Date were eligible to participate in the Rights Offering. According to the Applicant, on or about October 10, 2012, Plan participants who held shares of DCBF Stock in their Plan accounts as of the Record Date (the Invested Participants) were mailed information about the Rights Offering.

The Applicant notes that individuals who held DCBF Stock directly were mailed similar information at that time. In this regard, all Invested Participants (there were 53 at the time) were mailed: (a) a copy of the prospectus that was filed with the Securities and Exchange Commission; and (b) a letter from DCBF detailing the process Invested Participants would use to participate in the Rights Offering. In addition, the Applicant notes that Invested Participants could call the subscription and information agent engaged by DCBF in connection with the Rights

Offering, Broadridge Corporate Solutions, Inc. (Broadridge), using the toll-free number listed in the letter, if they had any questions about the Rights Offering or the exercise process.

10. The Applicant states further that the offering period of the Rights Offering (the Offering Period) formally opened on October 16, 2012, and was originally scheduled to expire at 5:00 p.m. on November 12, 2012. However, according to the Applicant, the Board extended the Offering Period for two weeks (until November 26, 2012), in response to Hurricane Sandy, which adversely impacted the ability of Broadridge to perform its duties in connection with the Rights Offering.

11. The Applicant states that DCBF initiated the Rights Offering by distributing to the holders of DCBF Stock at no charge, non-transferable subscription rights (the Rights) to purchase additional common shares of DCBF Stock. For every three common shares of DCBF Stock owned as of the Record Date, a holder was entitled to receive one Right, subject to availability and proration. Each Right entitled the holder to a basic subscription right (the Basic Subscription Right) and an over-subscription privilege (the Over Subscription Privilege). The Rights were not listed for trading on any stock exchange or the OTCBB.

12. As represented by the Applicant, the Basic Subscription

Right of each Right gave a shareholder the opportunity to purchase one share of DCBF common stock for \$3.80 per share, subject to certain limitations or proration. Shareholders could exercise all or a portion of their Basic Subscription Rights or choose to exercise no Basic Subscription Rights at all. Fractional shares resulting from the exercise of Basic Subscription Rights were eliminated by rounding down to the nearest whole share.

13. The Applicant represents that the Over-Subscription Privilege allowed a shareholder who purchased all of the DCBF Stock available to them pursuant to their Basic Subscription Right to purchase a portion of any shares of DCBF Stock that were not purchased pursuant to the exercise of other shareholders' Basic Subscription Rights. Shareholders were required to indicate on their Rights certificate how many additional shares they would like to purchase pursuant to the Over-Subscription Privilege. The Applicant states that, if sufficient shares of DCBF Stock were available, DCBF honored over-subscription requests in full. The Applicant states further, that, if over-subscription requests exceeded the number of common shares available to be purchased pursuant to the Over-Subscription Privilege, DCBF allocated the available shares of DCBF Stock among shareholders who over-subscribed by multiplying the number of shares of DCBF Stock

requested by each shareholder through the exercise of the Over-Subscription Privilege by a fraction that equaled (x) the number of shares available to be issued through the Over-Subscription Privilege divided by (y) the total number of shares of DCBF requested by all subscribers through the exercise of the Over-Subscription Privilege. The Applicant states that DCBF did not issue fractional shares through the exercise of Over-Subscription Privileges.

14. The Applicant represents that another feature of the Rights Offering was a subsequent private offering (the Private Offering) held for certain standby investors (the Standby Investors).¹¹ According to the Applicant, DCBF entered into separate standby purchase agreements with the Standby Investors in order to maximize the amount of capital raised to ensure that shares of DCBF Stock available in the Rights Offering were purchased. In this regards, each Standby Investor agreed to acquire, in the Private Offering, a minimum number of shares of DCBF Stock if they remained unsold following the completion of the Rights Offering.¹² The Applicant represents that the price

¹¹ The Applicant states that the Standby Investors included certain directors and executive officers who might not participate in the original Rights Offering.

¹² The Applicant states that five Standby Investors would have been permitted to terminate their standby purchase agreements if

per share to be paid by the Standby Investors was the same price paid by subscribers in the Rights Offering, \$3.80. Furthermore, the Applicant states that if all of the shares of DCBF Stock offered were subscribed for in the Rights Offering, DCBF would nevertheless sell a minimum number of shares to the Standby Investors as required by the standby purchase agreements.¹³ The Applicant states that pursuant to the terms of the Rights Offering, all unexercised Rights would expire and become worthless after the close of the Rights Offering.

Exercise of the Rights

15. The Applicant states that the Plan received the Rights on the same terms as all holders of DCBF Stock. Thus, the Trustee received a total of 27,458 Rights that were allocated among Invested Participants based on the relative number of shares of DCBF Stock held in their accounts on the Record Date.

16. According to the Applicant, in order to exercise their

a certain amount was not raised in both the Rights Offering and the Private Offering. However, because the Rights Offering raised more than those thresholds, the standby purchase agreements were not terminated.

¹³ The Applicant notes that several of these Standby Investors were Plan participants who could have elected to purchase shares in the Private Offering through their Plan accounts using the Plan's self-directed investment feature.

Rights, a shareholder was required to submit a completed exercise form and tender the appropriate exercise price before the Offering Period expired on November 26, 2012. However, the Applicant notes that Invested Participants were required to submit elections to exercise Rights to the Trustee five business days before the above expiration date, so that the Trustee could aggregate all of the elections and submit a single consolidated election on behalf of all electing Invested Participants to Broadridge. Accordingly, Invested Participants were required to submit election forms to the Trustee no later than 5:00 p.m. on November 19, 2012. The Applicant represents that this early direction deadline was similar to the deadlines imposed by brokers and other stockholders who hold shares for the benefit of third parties.

17. The Applicant states that for each Invested Participant who directed the Plan Trustee to exercise Rights attributable to his or her Account within the Plan, the funds needed to pay the \$3.80 per share exercise price were obtained by either selling specific investments at the Invested Participant's direction or by using cash equivalents in their account, at the Invested Participant's direction. The Applicant represents that, to the extent that an Invested Participant's account did not hold adequate funds to exercise all Rights pursuant to the Invested

Participant's direction, the Plan exercised such Rights to the fullest extent possible based on funds available in such accounts. According to the Applicant, any common shares of the DCBF Stock purchased upon exercise of the Rights held by an Invested Participant's Plan account was allocated to such account, and remained there subject to further investment direction from the Invested Participant.

18. According to the Applicant, notwithstanding the foregoing, the Trustee was instructed to note the public trading price of a share of DCBF stock on the business day immediately preceding the expiration of the Rights Offering. According to the Applicant, if, on that date, DCBF Stock last traded at or above \$3.80, the Trustee was to exercise the Rights on behalf of Invested Participants pursuant to the Invested Participants' instructions. However, if the last trade price was below \$3.80 per share, the Trustee was instructed not to exercise any Rights and to redeposit all money into the appropriate Invested Participants' Plan accounts. The Applicant represents that, because the DCBF Stock price was above \$3.80 per share on the business day immediately preceding the expiration of the Offering Period, the Trustee exercised the Rights as directed by the Invested Participants. In this regard, the Applicant represents that during the 52 week period ending July 1, 2013, the DCBF

Stock traded on the OTCBB in the range from \$3.99 to \$5.60 per share, well above the \$3.80 price set for shares purchased through the Rights Offering. Furthermore, according to the Applicant, from April 1, 2012 through the expiration of the Rights Offering, no executive officer or director of DCBF, or their immediate family members bought or sold DCBF Stock, with the exception that each calendar quarter DCBF purchased DCBF Stock for its non-employee directors pursuant to a prior written plan as payment of directors' fees.

19. On December 5, 2012, DCBF announced that the Rights Offering had been oversubscribed and that the shares of the DCBF Stock purchased in the Rights Offering would be issued as soon as possible after that date. The shares of DCBF Stock were allocated to the Plan accounts of Invested Participants who exercised Rights on December 19, 2012.

20. The Applicant represents that DCBF did not make any recommendation to Invested Participants or any DCBF shareholders regarding whether they should exercise their Rights but urged them to make independent decisions based on their assessment of DCBF's business and the risk factors associated with the Rights Offering. As a result, the Applicant states that the Plan exercised Rights and purchased 7,426 shares for 15 Invested Participants through the exercise of Basic Subscription Rights.

The Applicant further represents that the Plan also exercised the Over-Subscription Privilege for 10 Invested Participants who wanted to acquire an additional 8,740 shares. However, because the over-subscription requests exceeded the number of shares of DCBF Stock available to purchase under the Rights Offering, the Plan was only able to purchase an additional 6,056 shares for the 10 Invested Participants.¹⁴

Request for Exemptive Relief

21. DCBF requests exemptive relief for acquisition and holding of the Rights by the Plan in connection with the Rights Offering. The Applicant states that the Rights constitute employer securities, as defined under section 407(d)(1) of the Act. The Applicant states that the Rights do not satisfy the definition of "qualifying employer securities," as defined under section 407(d)(5) of the Act.

22. The Applicant notes that section 406(a)(1)(E) of the Act prohibits the fiduciary of a plan from causing the plan to engage in a transaction that constitutes the acquisition, on behalf of a

¹⁴ According to the Applicant, DCBF also held the Private Offering as discussed above, wherein the Plan purchased 30,600 shares of DCBF Stock for 3 Plan participants who were Standby Investors through the self-directed investment feature of the Plan.

plan, of any "employer security in violation of Section 407(a) of the Act." Moreover, section 406(a)(2) of the Act prohibits a fiduciary who has the authority or discretion to control or manage the assets of a plan from allowing the plan to hold any "employer security" that violates section 407(a) of the Act. Section 407(a) of the Act prohibits plans from acquiring or holding employer securities that are not qualifying employer securities or employer real property that is not qualified employer real property. Additionally, Section 406(b)(1) of the Act prohibits a plan fiduciary from "deal[ing] with the assets of the plan in his own interest or for his own account." Under Section 406(b)(2), a fiduciary may not "act in any transaction involving the plan on behalf of a party (or represent a party) whose interests are adverse to the interests of the plan or the interests of its participants or beneficiaries."

The Applicant states that the acquisition and holding of the Rights by the Plan may violate sections 406(a)(1)(E), 406(a)(2), and 407(a)(1)(A) of the Act and the fiduciary self-dealing and conflict of interest provisions of sections 406(b)(1) and (b)(2) of the Act. Accordingly, the Applicant requests relief from the restrictions of sections 406(a)(1)(E), 406(a)(2), 406(b)(1), 406(b)(2) and 407(a)(1)(A) of the Act. Finally, the Applicant requests that an exemption for the above transactions be granted

with retroactive effect as of the date the Rights Offering was made to DCBF shareholders, and through the closing date of the offering.

Statutory Findings

23. DCBF represents that the proposed exemption is administratively feasible. In this regard, the acquisition and holding of the Rights by the Plan allocated to Invested Participants' accounts was a one-time transaction that involved an automatic distribution of the Rights to all shareholders. In addition, the Applicant states that it is customary for corporations to make a rights offering available to all shareholders.

24. DCBF represents that the transactions which are the subject of this proposed exemption are in the interest of the Plan and its participants and beneficiaries, because such transactions represented a valuable opportunity to Plan participants to buy DCBF Stock at a discount. This discount was realized by Plan participants who directed the Trustee to sell all or part of the DCBF Stock held in their accounts immediately after the exercise of the Rights and investing the proceeds from such sales into other investment options under the Plan. Furthermore, all fees related to the Plan's exercise of Rights

were paid by DCBF and no fees related to the Rights Offering or exercise of Rights were paid with Plan assets.

25. DCBF represents that the proposed exemption is protective of the rights of the participants and beneficiaries of the Plan. In this regard, the Applicant states that participation in the Rights Offering protected the Invested Participants from having their interests in DCBF diluted as a result of the Rights Offering. DCBF represents further that the Invested Participants were adequately protected in that such individuals acquired and held the Rights automatically as a result of the Rights Offering, which itself was an independent corporate act of DCBF, all shareholders of DCBF Stock, including the Plan, were treated in a like manner. In this regard, each shareholder of the DCBF stock, including each Plan Participant who held DCBF shares in their Plan account, received the same proportionate number of Rights, and this proportionate number of Rights was based on the number of DCBF shares held by such shareholder.

The Applicant represents that all decisions regarding Rights held by the Plan were made by the Invested Participants whose accounts in the Plan received the Rights. Moreover, the Applicant represents that these Invested Participants provided directions to the Trustee, in accordance with the provisions under the Plan for individually-directed investment of such

accounts. Finally, the Applicant represents that the closing price per share for DCBF Stock on November 23, 2012 (the last business day before the Offering election period closed), was \$4.27, which was in excess of the strike price of \$3.80 per share.

Summary

26. In summary, DCBF represents that the Rights Offering satisfied the statutory requirements for a proposed exemption under section 408(a) because:

(a) The acquisition of the Stock Rights by the Plan was made pursuant to the terms that were the same for all shareholders of DCBF Stock;

(b) The acquisition of the Rights by the Plan resulted from an independent, corporate act of DCBF;

(c) Each shareholder of the Stock, including the Plan, received the same proportionate number of Stock Rights, and this proportionate number of Stock Rights was based on the number of shares of Stock held by each such shareholder;

(d) The Rights were acquired pursuant to provisions under the Plan for individually-directed investments of the accounts of the individual participants in the Plan, a portion of whose accounts in the Plan hold DCBF Stock;

(e) The decisions with regard to the holding and disposition of the Rights by the Plan were made by each of the Invested Participants in accordance with the provisions under the Plan for individually-directed accounts; and

(f) No brokerage fees, no subscription fees and no other charges were paid by the Plan with respect to the acquisition and holding of the Rights, and no brokerage fees, no commissions and no other monies were paid by the Plan to any broker in connection with the exercise of the Rights.

NOTICE TO INTERESTED PERSONS

Notice of the proposed exemption will be given to all interested persons within 15 days of the publication of the notice of proposed exemption in the Federal Register. Notice will be provided by e-mail with proof of delivery to all Plan participants who are actively employed with DCBF and will be mailed via first-class mail to all other interested persons. Such mailing will contain a copy of the Notice, as it appears in the Federal Register on the date of publication, plus a copy of the Supplemental Statement, as required, pursuant to 29 CFR 2570.43(a)(2), which will advise all interested persons of their right to comment and to request a hearing.

All written comments and/or requests for a hearing must be received by the Department from interested persons within 45 days of the publication of this proposed exemption in the Federal Register.

All comments will be made available to the public.

WARNING: Do not include any personally identifiable information (such as name, address, or other contact information) or confidential business information that you do not want publicly disclosed. All comments may be posted on the Internet and can be retrieved by most Internet search engines.

FOR FURTHER INFORMATION CONTACT: Ms. Jennifer Erin Brown of the Department at (202) 693-8352. (This is not a toll-free number.)

The Home Savings and Loan Company 401(k) Savings Plan (The Plan),
United Community Financial Corporation (UCFC), and the Home
Savings and Loan Company (Home Savings)
Located in Youngstown, OH
[Application No. D-11780]

PROPOSED EXEMPTION

The Department is considering granting an exemption under the authority of section 408(a) of the Employee Retirement Income Security Act of 1974, as amended, (the Act or ERISA) and section 4975(c)(2) of the Internal Revenue Code of 1986, as amended (the Code), and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (76 FR 66637, 66644, October 27, 2011).

Section I: Transactions

If the proposed exemption is granted, effective for the period beginning April 30, 2013, and ending May 31, 2013, the restrictions of sections 406(a)(1)(E), 406(a)(2), 406(b)(1), 406(b)(2), and 407(a)(1)(A) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(E) of the Code, **15** shall not apply:

15 For purposes of this proposed exemption, references to specific provisions of Title I of the Act, unless otherwise

(a) To the acquisition of certain subscription right(s) (the Rights) by the individually-directed account(s) (the Account(s)) of certain participant(s) in the Plan (Invested Participants) in connection with an offering (the Offering) of shares of common stock (the Stock) of United Community Financial Corporation (UCFC) by UCFC, a party in interest with respect to the Plan; and

(b) To the holding of the Rights received by the Accounts during the subscription period of the Offering, provided that the conditions, as set forth in Section II, below, were satisfied for the duration of the acquisition and holding.

Section II: Conditions

(a) The acquisition of the Rights by the Accounts of Invested Participants occurred in connection with the Offering, and the Rights were made available by UCFC to all shareholders of the Stock other than the Employee Stock Ownership Plan sponsored by UCFC;

(b) The acquisition of the Rights by the Accounts of Invested Participants resulted from an independent corporate act of UCFC;

(c) Each shareholder of Stock, including each of the

specified, refer also to the corresponding provisions of the Code.

Accounts of Invested Participants, received the same proportionate number of Rights, and this proportionate number of Rights was based on the number of shares of Stock held by each such shareholder;

(d) The Rights were acquired pursuant to, and in accordance with, provisions under the Plan for individually-directed investments of the Accounts by the individual participants in the Plan, a portion of whose Accounts in the Plan held the Stock;

(e) The decision with regard to the holding and disposition of the Rights by an Account was made by the Invested Participant whose Account received the Rights; and

(f) No brokerage fees, commissions, or other fees or expenses were paid by the Plan to any related broker in connection with the exercise of any of the Rights, and no brokerage fees, commissions, subscription fees, or other charges were paid by the Plan with respect to the acquisition and holding of the Stock.

EFFECTIVE DATE: This proposed exemption, if granted, will be effective for the period beginning on April 30, 2013, the commencement date of the Offering, and ending on May 31, 2013, the close of the Offering.

SUMMARY OF FACTS AND REPRESENTATIONS

Background

1. The prohibited transaction exemption proposed herein was requested by the Home Savings and Loan Company (Home Savings), United Community Financial Corporation (UCFC), and the Home Savings and Loan Company 401(k) Savings Plan (the Plan), (together, the Applicant).¹⁶ Home Savings is an Ohio state-chartered savings bank and a wholly-owned subsidiary of UCFC, with 33 full-service branches and nine loan production offices located throughout Ohio and western Pennsylvania. The principal business of Home Savings is the origination of mortgage loans, including construction loans on residential and nonresidential real estate located in Home Savings' primary market area. In addition to real estate lending, Home Savings originates commercial loans and various types of consumer loans. UCFC is a unitary thrift holding company incorporated in the State of Ohio for the purpose of owning all of the outstanding capital stock of Home Savings issued upon the conversion of Home Savings from a mutual savings association to a permanent capital stock savings

¹⁶ The Summary of Facts and Representations is based on the Applicant's representations and does not reflect the views of the Department, unless indicated otherwise.

association on July 8, 1998.¹⁷

2. Home Savings sponsors the Plan, a qualified defined contribution plan under section 401(a) of the Code, originally effective on January 1, 1993. The Applicant represents that the Plan, as amended and restated, operates in compliance with applicable requirements of the Code and is intended to operate in compliance with the safe harbor in section 404(c) of the Act. As of March 21, 2013, there were 567 participants with account balances in the Plan and the Plan had total assets of approximately \$20,392,500.

3. The Plan is funded by elective employee deferrals, as well as discretionary employer matching contributions. The Applicant represents that the match has consistently been funded in cash and invested according to the elections of individual participants. Participants in the Plan may choose among a variety of investment options, including any combination of mutual funds and UCFC common stock (the Stock). Shares of Stock held by the Plan are held in the UCFC stock fund (the Stock Fund). Wilmington Trust, National Association (the Trustee) serves as the Plan's trustee and custodian of the Plan's assets. The Stock is listed on the NASDAQ Global Select Market. The

¹⁷ Home Savings was originally organized as a mutual savings association under Ohio Law in 1889.

Applicant represents that the Stock is a "qualifying employer security," as defined under section 407(d)(5) of the Act and 4975(e) of the Code.

4. The Plan is administered by the Compensation and Benefits Committee (the Committee), which is composed of certain appointed employees of Home Savings. The Committee oversees the selection and oversight of the Plan's investment alternatives. An entity that is unrelated to the Applicant, UBS Financial Services, provides advice and counsel to the Committee regarding the menu of investment alternatives. The Applicant states that on an annual basis, or more frequently if necessary, the Committee reviews the Plan's investment fund alternatives, including the Stock Fund alternative. Furthermore, according to the Applicant, although UBS Financial Services has recommended several investment fund changes, it has never recommended freezing or eliminating the Stock Fund as an investment option.

5. The Applicant states that investment in the Stock Fund by participants in the Plan is entirely voluntary. The Applicant represents further that neither UCFC nor Home Savings contributes any of the Stock to the Plan as part of the employer matching contribution. Instead, the Stock is acquired by a participant's Plan account only as a result of participant-directed investment decisions. According to the Applicant, the Stock shares held by

the Plan have voting and dividend rights that are passed through to Plan participants whose accounts are invested in the Stock Fund. The Trustee has the responsibility of carrying out the voting directions of Plan participants. However, no participant instructions are permitted with respect to dividends because they are reinvested according to a standard process.

Capital Raise Activities

6. The Applicant states that since August 28, 2008, UCFC has been subject to various orders and agreements with federal and state bank regulators to reduce UCFC's debt and raise its capital levels in order to comply with certain regulatory capital requirements. In this regard, the Applicant states that UCFC has engaged in multiple activities to increase its capitalization, including: sales of its broker/dealer and trust company subsidiaries; sales of various bank branches and securities; sales of Stock to certain investors; and various expense reduction efforts. Additionally, the Applicant states that UCFC explored other potential sales of assets, joint ventures, and transactions with strategic partners, which UCFC ultimately determined were not in the best interest of shareholders or were not likely to receive required regulatory approvals.

7. According to the Applicant, UCFC's capital raise plan

included a private offering (the Private Offering) of a combination of preferred and common shares of UCFC, commencing on January 11, 2013. The Private Offering involved UCFC entering into securities purchase agreements with various accredited investors and subscription agreements with certain corporate insiders. Pursuant to the securities purchase agreements, on March 22, 2013, the investors purchased 6,574,272 newly issued shares of Stock at a purchase price of \$2.75 per share and 7,942 newly created and issued perpetual mandatorily convertible non-cumulative preferred shares of UCFC at a purchase price of \$2,750 per share, for an aggregate price of approximately \$39.9 million.¹⁸ Pursuant to the subscription agreements in the Private Offering, certain insiders of UCFC were also to invest, and did invest, an aggregate of approximately \$2.1 million in exchange for the issuance of 755,820 newly issued shares of Stock, at the same purchase price of \$2.75 per share. The issuance and sale of Stock to these insiders was subject to the approval of UCFC shareholders.

The Rights Offering

¹⁸ According to the Applicant, the securities purchase agreements also required UCFC to follow through on its plan to conduct a stock rights offering to existing shareholders.

8. In connection with its capital raise and in conjunction with the Private Offering, the Applicant states that UCFC's Board of Directors determined to conduct a stock rights offering (the Rights Offering) for existing shareholders of UCFC. According to the Applicant, in addition to maintaining and improving Home Savings' capital position and satisfying UCFC's regulatory and contractual obligations, the Rights Offering improved and strengthened UCFC's financial condition, allowing UCFC to pursue growth strategies and give shareholders the opportunity to limit further ownership dilution after the Private Offering by buying additional shares of the Stock.

9. The Rights Offering commenced on April 30, 2013, and closed on May 31, 2013, at 5:00 p.m. Eastern Time. UCFC reserved the right to extend the Rights Offering one or more times, but in no event later than June 30, 2013; however, no extensions occurred. The terms of the Rights Offering provided that up to 1,818,181 shares of the Stock would be available for purchase at a subscription price of \$2.75 per share (the Subscription Price). According to the Applicant, UCFC determined that the Subscription Price should be the same as the price at which the accredited investors agreed to purchase the newly issued shares of Stock in the Private Offering since that price was negotiated

in an arms-length transaction.¹⁹ Finally, the Applicant states that UCFC considered the trading price of the Stock over the last year compared to the past three years and the Stock's low average trading volume. The Applicant represents that the Rights Offering was fully subscribed and resulted in gross proceeds for UCFC of \$5,000,000 and net proceeds of \$4,467,500.²⁰ UCFC informed shareholders that the proceeds from the Rights Offering were intended to be used for general corporate purposes, to pursue its business objectives, or as an investment in Home Savings to improve its capital position.

10. Under the terms of the Rights Offering, all shareholders of the Stock, including Plan participants (the Invested Participants) whose Plan accounts (the Account(s)) held shares of the Stock, automatically received, at no charge, non-transferable subscription rights (the Rights) to purchase, through the exercise of such Rights, their share of \$5 million worth of the Stock issued in connection with the Rights

¹⁹ In determining the price agreed to in the Private Offering, the Applicant represents that any sizeable offering would be made at a discount to market and book value, and UCFC considered the advice of its financial advisors that obtaining a higher price was not feasible.

²⁰ The Applicant represents that expenses related to the Rights Offering included: subscription and information agent fees and expenses, legal fees and expenses, accounting fees and expenses, printing and mailing costs, and other miscellaneous expenses.

Offering.²¹ Under the terms of the Rights Offering, a "basic subscription privilege" provided each shareholder, including an Invested Participant whose Account held shares of the Stock, the opportunity to purchase 0.06 shares of Stock for every one share of Stock owned as of March 21, 2013 (the Record Date), at a subscription price of \$2.75 per share, rounded down to the nearest whole share. The Applicant states that, for example, if a shareholder owned 1,000 shares of Stock as of the record date, that shareholder would receive the right to purchase 60 shares of the Stock for \$2.75 per share, subject to certain limitations and subject to allotment. Shareholders could exercise all or a portion of their basic subscription privilege or could choose to exercise no basic subscription privilege at all.

11. The Applicant states that each shareholder, including an Invested Participant whose Account held shares of the Stock, was also entitled to purchase shares of Stock in the Rights Offering by using an "over-subscription privilege." The "over-subscription privilege" allowed each shareholder to subscribe for

²¹ The Applicant states that Rights were distributed to all UCFC shareholders other than the Employee Stock Ownership Plan sponsored by UCFC (the ESOP). According to the Applicant, as of the date that Rights were distributed, the ESOP was invested primarily in shares of the Stock and would not have been able to exercise Rights without selling some of those shares. Accordingly, the Applicant notes that UCFC determined that the ESOP should be excluded from the Rights Offering.

additional shares of Stock, in the event such shareholder first exercised his or her basic subscription privileges in full, subject to certain limitations and allocation procedures, up to the number of shares of Stock available in the Rights Offering that were not subscribed for by the other holders of the Rights pursuant to their basic subscription privileges. UCFC allocated the available Stock among shareholders who over-subscribed on a pro-rata basis if there were not enough shares available to honor the over-subscription requests in full.

12. The Applicant states that the ability to purchase Stock in the Rights Offering was subject to an overall beneficial ownership interest limitation of 4.9% of the outstanding Stock after giving effect to a shareholder's participation in the Rights Offering and taking into account the holdings of the shareholder and his or her affiliates. All shareholders of Stock, including the Accounts of Invested Participants, held the Rights until the Rights were exercised or until the Rights expired and became worthless at the close of the Rights Offering.

13. As of the Record Date, out of 567 total Plan participants, 203 were eligible to participate in the Rights

Offering.²² The Applicant states that on May 1, 2013, each of the Invested Participants was sent detailed information regarding the Rights Offering, including a copy of the prospectus which described the Rights Offering, an election form, a return envelope addressed to UCFC, and a statement indicating the number of shares of Stock each such participant held in his or her Account, as of the Record Date. In addition to the form letters and accompanying documents, UCFC distributed two special Q&A sheets for all employees and all shareholders. These Q&A sheets were filed with the U.S. Securities and Exchange Commission (SEC) on May 6, 2013, and distributed to shareholders on the same date.

The Applicant represents that no other communications were sent to Plan participants because federal and state securities laws prohibit separate communications about offers unless they are filed with the SEC.

14. The Applicant represents that Invested Participants were instructed that the election to exercise, some, all, or none of his or her Rights had to be received by the close of business on the fifth business day prior to the expiration of the Rights Offering (May 24, 2013, at 4:00 p.m. EST) so that there was

²² As of the Record Date, the Plan owned 562,928 shares out of 32,941,285 outstanding shares of Stock, or 1.71% of the outstanding Stock.

reasonable time for the Trustee to reconcile the Invested Participants' instructions with their Accounts. Additionally, Invested Participants were instructed that their election to exercise the Rights was irrevocable. This process, considered an "early exercise," is commonly required by brokers and other stockholders who hold shares for the benefit of third parties. To ensure the Invested Participants were protected against prejudice due to such early exercise, UCFC instructed the Trustee not to exercise the Invested Participants' Rights if the official closing price of a share of Stock was below \$2.75 as of the last business day prior to the close of the Rights Offering. The Applicant represents that at the close of business on May 30, 2013, one day prior to the close of the Rights Offering, the Stock was trading on the NASDAQ at \$4.02 per share. Furthermore, the closing price of the Stock on the closing date of the Rights Offering on May 31, 2013, was \$4.09. Therefore, the exercise of the Rights was effectuated by the Trustee in accordance with the instructions from UCFC and at a purchase price that was less than its then-current fair market value.

15. An Invested Participant was only allowed to pay for the exercise of Rights using funds in his or her Account. According to the Applicant, the exercise of the Rights on behalf of an Invested Participant required such individual to transfer assets

into the UCFC Rights Offering Liquidity Fund (the Rights Fund), a cash fund, prior to such exercise. The Applicant explains that the Rights Offering election form provided a basic worksheet for the Invested Participant to determine the amount of assets that needed to be transferred into the Rights Fund. According to the Applicant, the Invested Participant was responsible for liquidating other investments in his or her Account and transferring those assets to the Rights Fund, pending the exercise of the Rights. To the extent that an Invested Participant's Account did not hold adequate assets to exercise all the Rights pursuant to the Invested Participant's direction, the Trustee exercised such Invested Participant's Rights to the fullest extent possible based on the assets in such Invested Participant's Rights Fund. The Applicant states further that Invested Participants received a trade confirmation or other notice when the exercise of the Rights was completed on their behalf.

16. The Applicant represents that to exercise the Rights on behalf of Invested Participants, the Trustee placed the Invested Participants' orders to purchase the Stock with the subscription agent, Registrar and Transfer Company (Registrar), a registered broker-dealer that is unrelated to UCFC and the Plan. UCFC represents that the subscription price (which was based on the

number of Rights to be exercised for each Invested Participant) was liquidated from that Participant's Rights Fund account, and cash equal to the necessary subscription payment was transferred to Registrar. The Applicant states further that Registrar received the subscription elections and related subscription payments from all electing shareholders, including the Trustee. Registrar calculated the number of shares of Stock to be issued to each subscriber and returned any excess subscription price paid by that subscriber (since the Rights Offering was oversubscribed). Finally, the Applicant states that Registrar issued the purchased shares of Stock to each subscriber, including the Trustee, and forwarded the subscription payments to UCFC. Following its receipt of the purchased shares of Stock after the close of the Rights Offering, according to UCFC, the Trustee allocated such shares to the Accounts of Invested Participants. In the event that the Invested Participant transferred more assets into the Rights Fund than was necessary to exercise all of his or her Rights, the Trustee transferred such assets into the Invested Participant's other investments, consistent with his or her elections for future contributions, on file at the time the Rights Offering was completed. According to the Applicant, the Stock was issued to shareholders, including the Accounts of Invested Participants, on June 10, 2013.

17. UCFC states that it paid any expenses associated with the Rights Offering. In this regard, the Applicant represents that no brokerage fees, commissions, subscription fees, or other charges were paid by the Plan with respect to the acquisition and holding of the Stock, and no brokerage fees, commissions, fees, or expenses were paid by the Plan to any related broker in connection with the exercise of the Rights.

18. The Applicant states that out of 203 Invested Participants, only 40 participated in the Rights Offering (7.05% of total Plan participants and 19.70% of Invested Participants). The Plan purchased 97,180 shares of the Stock through the Rights Offering for a total cost to the Plan of \$267,245. According to the Applicant, there were no resale restrictions on the Stock held in the Accounts of Invested Participants, other than the general limitations under securities laws applicable to all shareholders that prohibit buying or selling shares while in possession of material non-public information. The Applicant states that as of June 11, 2013, the first valuation date after the Stock was issued to the Plan, the Plan held 652,391 shares of Stock which represented 1.3% of the 50,129,531 shares outstanding on that date. The Plan's total investment in the Stock was valued at \$2,589,999.27 (\$3.97 per share) as of that date. Furthermore, the Plan's investment in the Stock Fund on that date

represented 12.7% (\$2,589,992.27) of the total value of Plan assets (\$20,399,202.42).

Requested Relief

19. The Applicant has requested exemptive relief for the acquisition of the Rights by the Accounts of Invested Participants in connection with the Rights Offering and the holding of the Rights by the Accounts of Invested Participants during the subscription period of the Rights Offering. The Applicant represents that the Rights acquired by the Invested Participants satisfy the definition of "employer securities," pursuant to section 407(d)(1) of the Act. However, as the Rights were not stock or marketable obligations, they do not meet the definition of "qualifying employer securities," as set forth in section 407(d)(5) of the Act. Accordingly, the Applicant states that the subject transactions constitute the acquisition and holding, on behalf of the Accounts of Invested Participants, of employer securities which are not qualifying employer securities, in violation of sections 406(a)(1)(E), 406(a)(2), 406(b)(1), and 406(b)(2) and 407(a)(1)(A) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(E) of the Code.

20. As noted above, the subject transactions have already

been consummated. In this regard, the Accounts of Invested Participants acquired the Rights pursuant to the Rights Offering on April 30, 2013, and held such Rights until the closing of the Rights Offering on May 31, 2013, when such Rights were either exercised or expired. The Applicant has requested retroactive relief because UCFC determined that it was in the best interest of its shareholders generally to issue the Rights as soon as possible after the offering documents were approved by the SEC so that UCFC could maintain and improve its capital position and its capital ratio in accordance with its regulatory obligations and other agreements, as described above. Therefore, the Applicant seeks retroactive relief effective from April 30, 2013, the date that the Accounts of Invested Participants acquired the Rights, to May 31, 2013, the closing date of the Rights Offering.

21. UCFC represents that the proposed exemption is administratively feasible. In this regard, the acquisition and holding of the Rights by the Accounts of Invested Participants was a one-time transaction that involved an automatic distribution of the Rights to all shareholders. The Applicant represents further that it is customary for corporations to make a rights offering available to all shareholders and that the Department has granted exemptions for similar types of transactions in the past.

22. UCFC represents that the proposed exemption is in the interests of the Invested Participants, because if the Plan had not participated in the Rights Offering, the Invested Participants would not have received the same benefit as other UCFC shareholders and would not have been able to reduce the dilution of their investment in UCFC that occurred as a result of the Private Offering and the shares of Stock purchased by other shareholders of UCFC in connection with the Rights Offering.

23. UCFC represents that the proposed exemption is protective of the rights of the participants and beneficiaries of the Plan because decisions with regard to the holding and disposition of the Rights were made by each of the Invested Participants in accordance with the provisions under the Plan for individually-directed accounts. Additionally, the Applicant states that the Plan participants and beneficiaries were protected against prejudice in connection with the early exercise of the Rights by instructions given to the Trustee by UCFC not to exercise any Rights if the official closing price of a share of Stock was below \$2.75 as of the last business day prior to the close of the Rights Offering. The Applicant represents that the closing price of the Stock on that date was \$4.02, and the closing price on the day the Rights Offering closed was \$4.09; therefore, the exercise of the Rights was effectuated by the

Trustee in accordance with UCFC's instructions and at a purchase price that was below its then-current fair market value.

24. The Applicant states further that the Accounts of Invested Participants were protected against economic loss because the Rights were given to Invested Participants for free.

Furthermore, the Applicant suggests that in the event that an Invested Participant chose not to exercise the Rights, his or her Account was not affected, as the Rights automatically expired and became worthless at the end of the Rights Offering.

25. In summary, the Applicant represents that the subject transactions satisfy the statutory criteria for an exemption under section 408(a) of the Act because:

(a) The acquisition of the Rights by the Accounts of Invested Participants occurred in connection with the Rights Offering, and the Rights were made available by UCFC to all shareholders of the Stock other than the Employee Stock Ownership Plan sponsored by UCFC;

(b) The acquisition of the Rights by the Accounts of Invested Participants resulted from an independent corporate act of UCFC;

(c) Each shareholder of Stock, including each of the Accounts of Invested Participants, received the same proportionate number of Rights, and this proportionate number of

Rights was based on the number of shares of Stock held by each such shareholder;

(d) The Rights were acquired pursuant to, and in accordance with, provisions under the Plan for individually-directed investments of the Accounts by the individual participants in the Plan, a portion of whose Accounts held the Stock;

(e) The decision with regard to the holding and disposition of the Rights by an Account was made by the Invested Participant whose Account received the Rights; and

(f) No brokerage fees, commissions, or other fees or expenses were paid by the Plan to any related broker in connection with the exercise of any of the Rights, and no brokerage fees, commissions, subscription fees, or other charges were paid by the Plan with respect to the acquisition and holding of the Stock.

NOTICE TO INTERESTED PERSONS

Notice of the proposed exemption (the Notice) will be provided to all Invested Participants within fifteen (15) days of publication of the Notice in the Federal Register. Notice will be provided by e-mail to all Invested Participants who are actively employed by UCFC or Home Savings in accordance with the Department's procedures for electronic disclosure to active

employees under 29 CFR §2520.104b-1(c). Notice will be provided via first-class mail to all other Invested Participants. Such notification will contain a copy of the Notice, as published in the Federal Register, and a supplemental statement, as required, pursuant to 29 CFR 2570.43(a)(2). The supplemental statement will inform all interested persons of their right to comment on and to request a hearing with respect to the pending exemption. All written comments and/or requests for a hearing must be received by the Department within 45 days of the publication of this proposed exemption in the Federal Register. All comments will be made available to the public.

WARNING: Do not include any personally identifiable information (such as name, address, or other contact information) or confidential business information that you do not want publicly disclosed. All comments may be posted on the Internet and can be retrieved by most Internet search engines.

FOR FURTHER INFORMATION CONTACT: Mr. Erin S. Hesse of the Department, telephone (202) 693-8546. (This is not a toll-free number.)

Liberty Media 401(k) Savings Plan (the Plan)

Located in Englewood, Colorado

[Application No. **D-11756**]

PROPOSED EXEMPTION

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (76 FR 66637, 66644, October 27, 2011).

SECTION I. TRANSACTIONS

If the exemption is granted, the restrictions of sections 406(a)(1)(E), 406(a)(2), 406(b)(1), 406(b)(2), and 407(a)(1)(A) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(E) of the Code, **23** shall not apply, effective August 9, 2012, until October 9, 2012, to:

(a) The acquisition by the individually-directed accounts

23 For purposes of this proposed exemption, references to specific provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

(the Accounts) in the Plan of certain participants (the Invested Participants) of stock subscription rights (the Rights) pursuant to a stock rights offering (the Rights Offering) by Liberty Interactive Corporation (LIC), a party in interest with respect to the Plan; and

(b) The holding of the Rights by the Invested Participants' Accounts during the subscription period.

SECTION II. CONDITIONS

(a) The receipt of the Rights by the Invested Participants' Accounts occurred in connection with the Rights Offering, and the Rights were made available by LIC to all shareholders of Series A Liberty Interactive common stock (the LIC Stock);

(b) The acquisition of the Rights by the Invested Participants' Accounts resulted from an independent corporate act of LIC;

(c) Each shareholder of LIC Stock, including each Invested Participant's Account, received the same proportionate number of Rights, and this proportionate number of Rights was based on the number of shares of the LIC Stock held by each such shareholder;

(d) The Rights were acquired pursuant to, and in accordance with, provisions under the Plan for individually-

directed investment of the Invested Participants' Accounts, all or a portion of whose Accounts in the Plan held the LIC Stock;

(e) The decision with regard to the disposition of the Rights by an Account was made by the Invested Participant whose Account received the Rights. Notwithstanding the above, if any of the Invested Participants failed to give instructions as to the disposition of the Rights received in the Rights Offering, such Rights were sold on the Nasdaq Global Market System (the Nasdaq) and the proceeds from the sale were distributed to such Invested Participant's Account; and

(f) No brokerage fees, commissions, or other fees or expenses were paid by the Plan or by the Invested Participants' Accounts to any broker related to Fidelity Management Trust Company (Fidelity), the Plan trustee, or to Liberty Media Corporation (LMC) or LIC in connection with the acquisition, holding or sale of the Rights.

EFFECTIVE DATE: This proposed exemption, if granted, will be effective for the period beginning August 9, 2012, through and including October 9, 2012.

SUMMARY OF FACTS AND REPRESENTATIONS

1. Liberty Media Corporation (LMC or the Applicant), a Delaware corporation with its principal place of business in Englewood, Colorado, is primarily engaged in media, communications and entertainment operating businesses. LMC is a publicly traded corporation and a participating employer in the Plan.

2. LIC, which was affiliated with LMC until 2011, is a participating employer in the Plan. LIC owns interests in subsidiaries and other companies which are primarily engaged in the video and on-line commerce industries. Through subsidiaries and affiliates, LIC operates in North America, Europe and Asia.

3. The Plan, which is sponsored by LMC and LIC, is a defined contribution plan that is intended to qualify under sections 401(a) and 401(k) of the Code. According to the Applicant, the Plan meets the requirements of section 404(c) of the Act and allows participants to direct the investment of their entire Plan accounts (including their 401(k) contributions, any employer contributions, and any rollover contributions) into one of 18 investment categories, including shares of Series A common stock issued by LMC (LMC Stock) and shares of LIC Stock issued by LIC.

As of August 8, 2012, the Plan had approximately 1,904 participants (including beneficiaries) and total assets of

\$233,663,352. As of August 8, 2012, the Plan held 1,450,477 shares of LIC Stock, valued at \$27,340,926 and representing 11.7% of the Plan's assets.²⁴ Such stock was allocated to the Plan Accounts of 970 Invested Participants. Also as of August 8, 2012, the Plan held 4,760 shares of LMC Stock, representing 20.85% of the Plan's assets and valued at \$48,699,017. The LIC Stock (ticker: LINTA) and the LMC Stock (ticker: LMCA) are traded on the Nasdaq.

4. As the trustee of the Plan, Fidelity also acts as the custodian of Plan assets, holds legal title to the assets, and executes investment directions in accordance with the participants' written instructions. The Liberty Media 401(k) Savings Plan Administrative Committee (the Committee) is the fiduciary responsible for Plan matters.

5. LIC decided to conduct the Rights Offering in order to raise capital for general corporate purposes. To this end, LIC provided written communications to all shareholders of LIC Stock regarding the Rights Offering. The disclosures to each Invested Participant included a copy of the LIC Offering Questions & Answers, as well as a copy of the LIC Rights Offering

²⁴ As of August 8, 2012, there were 542,297,982 shares outstanding of LIC Stock.

Instructions, both of which were mailed on July 17, 2012.²⁵

6. On August 8, 2012, shareholders of LIC approved a tracking stock proposal, which resulted in the amendment and restatement of LIC's certificate of incorporation to create Liberty Ventures common stock (Liberty Ventures Stock), a new tracking stock, and to make certain conforming changes to the existing LIC Stock, referred to hereafter as the "recapitalization."

7. Under the recapitalization, the Liberty Ventures Stock is intended to track and reflect the separate economic performance of the LIC Ventures Group, which is primarily focused on the maximization of the value of its investments in such companies as, Expedia, Inc., TripAdvisor, Inc., and other entities, such as Time Warner Cable Inc. The existing LIC Stock is intended to track and reflect the separate economic performance of the LIC Interactive Group, which is focused on video and online commerce operating businesses, such as QVC, Inc., Provide Commerce, Inc., and Backcountry.com, Inc.

8. On the date of the recapitalization (August 9, 2012),

²⁵ Subsequent to this mailing, the Invested Participants were notified of the dates instructions would be provided to Fidelity by a mailing of a Rights Offering Update on September 7, 2012. In addition, LIC issued a press release dated September 7, 2012, which set forth the exercise price for the purchase of the shares pursuant to the Rights offering.

each holder of LIC Stock received:

(a) 0.05 of a share of Liberty Ventures Stock²⁶ for each share of LIC Stock held as of the record date (August 9, 2012); and

(b) 1/3 of a subscription right (each, a Right) to purchase one share of Liberty Ventures Stock for each share of Liberty Ventures Stock to be received by such holder in the distribution (rounded up to the nearest whole Right), as described in (a) above.

Each Right entitled the holder to purchase one share of Liberty Ventures Stock at a subscription price equal to a 20% discount to the 10-trading day volume weighted average trading price of such Stock beginning on the first day those shares began trading "regular way" on the Nasdaq following the completion of the distribution of the Rights (the first trading day for the shares was August 10, 2012). The Rights Offering commenced on September 12, 2012, once the subscription price for the Rights

²⁶ The Applicant represents that the Liberty Ventures Stock that is issued by LIC, a participating employer in the Plan, is a "qualifying employer security." In relevant part, section 407(d)(5)(A) of the Act defines the term "qualifying employer security" as an employer security that is stock. Section 407(d)(1) of the Act defines the term "employer security" as a security that is issued by an employer of employees covered by a plan or by an affiliate of such employer. In this proposed exemption, the Department expresses no opinion on whether the Liberty Ventures Stock satisfies the definition of a "qualifying employer security."

was determined and remained open for 20 trading days. There were 64,174 Rights offered to shareholders of LMC. Of the Rights, the Invested Participants' Accounts received 24,174 Rights.

9. Except as described in Representation 11 below, with respect to Rights allocated to their Accounts, Invested Participants could either elect to (a) exercise the Rights, or (b) sell the Rights at an exercise price of \$35.99 per share of Liberty Ventures Stock. The elections applied to all of the Rights held in the Invested Participants' Accounts, including 401(k) contributions and employer matching contributions.

10. In addition to the Rights, all shareholders of LIC Stock were permitted to subscribe to purchase shares in excess of the shares reflected by the basic Rights issued to such shareholder, if the other shareholders did not exercise all of their basic Rights. Although the Plan was able to exercise oversubscription Rights, the Committee did not pass through this option to the Invested Participants because the Invested Participants would have been required to liquidate the assets in their Plan Accounts so that the purchase price for any Rights available under this option could be transmitted to Computershare Trust Company, N.A. (the Transfer Agent). This would have required Plan assets to be paid out of the Plan for which there was no assurance that any additional shares could be

purchased, and these Plan assets would have been held by the Transfer Agent in an uninvested account.

In addition, the Committee was concerned about the fiduciary implications of permitting Plan assets to be held in an uninvested account where there was no guarantee that any shares of Liberty Ventures Stock would be available for purchase under the oversubscription option. Therefore, the Committee did not direct Fidelity to participate in the oversubscription option on behalf of the Plan.

11. Due to securities law restrictions, certain Invested Participants, who were considered "reporting persons" under Rule 16(b)²⁷ of the Securities Exchange Act of 1934 (Rule 16(b)) with respect to LIC, did not have the right to instruct Fidelity to either sell or exercise the Rights credited to their Plan Accounts. LMC provided Fidelity with a list of those Invested Participants and Fidelity established the appropriate restrictions to prevent these Invested Participants from exercising or selling the Rights credited to their Accounts. As provided by the Plan and as directed by the Committee, Fidelity

²⁷ Rule 16(b) requires an officer, director, or any shareholder holding more than 10% of the outstanding shares of a publicly-traded company who makes a profit on a transaction with respect to the company's stock during a given six month period, pay the difference back to the company.

sold the Rights credited to these Rule 16(b) Invested Participants' Accounts as soon as it was administratively feasible following the receipt and allocation of the Rights to such Accounts.

12. To hold the Rights, the Plan established a temporary separate trust (the Rights Trust), with the Committee serving as the trustee. Within the Rights Trust, two investment funds were established. The first fund, the "Rights Holding Fund," was a separate fund set up to hold the Rights when they were issued. The Rights were credited to Invested Participants' Accounts based on their respective holdings of the Liberty Ventures Stock as of August 9, 2012. The second fund, the "Rights Receivable Fund," reflected the approximate value of the Liberty Ventures Stock due from the Subscription Agent, following the exercise of Rights on October 8, 2012, as directed by the Investing Participants.

13. With the exception of the Rule 16(b) "reporting persons," as described above, each Investing Participant could elect to exercise any percentage of the Rights allocated to such Participant's Account in the Plan. Under the Offering, an Invested Participant could elect to exercise the Rights by speaking to a Fidelity representative at any time prior to 4 p.m. Eastern Time, on or about September 26, 2016 (the Election Close-

Out Date). Investing Participants had the opportunity prior to the Election Close-Out Date to revoke or change instructions to exercise their Rights by (a) electing a new percentage of Rights to exercise, (b) by placing an order to sell the Rights, or (c) selecting a combination of both alternatives.

14. The dollar amount required to exercise the Rights was exchanged from other investments in an Investing Participant's Account into the Rights Receivable Fund that had been established under the Plan. The required dollar amount to exercise the Rights equaled the percentage of Rights to be exercised (as elected by the Investing Participant) multiplied by the number of Rights credited to the Investing Participant's Account and multiplied by the exercise price for the Rights Offering. The dollar amount was exchanged from the other investments in which the Investing Participant's Account was invested on a proportional basis by source, excluding shares of LIC Stock, Liberty Ventures Stock and LMC Stock. For those Invested Participants with insufficient funds to permit the exercise of the entire elected amount of Rights, Fidelity exercised as many Rights as their Account balances in the Plan permitted.

15. On October 8, 2012, the Rights to be exercised and the funds needed to consummate the transaction were submitted by Fidelity to Computershare Trust Company, N.A. (the Subscription

Agent) for the purchase of shares. Invested Participants' balances in the Rights Holding Fund were reduced by the number of Rights exercised on the Invested Participant's behalf. Upon receipt of the new shares, the Rights Receivable Fund was closed and the newly received shares were allocated to the Invested Participants' Accounts.

Those Invested Participants who elected to exercise only a portion of their Rights could later elect to exercise additional Rights to the extent that sufficient time existed prior to the Election Close-Out Date. The Election Close-Out Date was established to permit sufficient time for Fidelity to liquidate the Invested Participants' other assets in an orderly manner so that the necessary cash would be available to exercise the Rights before the Rights Offering expiration date (October 9, 2012). According to the Applicant, 74 Invested Participants exercised 3,171 Rights during this period.²⁸ If an Investing Participant failed to make an election during this period, or filed an invalid election, such Investing Participant would not be deemed

²⁸ It is represented that the Invested Participants' Accounts relied on the relief provided by the statutory exemption pursuant to section 408(e) of the Act and the regulations that are promulgated thereunder with respect to the exercise of the Rights. However, in this proposed exemption, the Department is expressing no opinion on whether the requirements of the statutory exemption have been met.

to have elected to exercise his or her Rights.

In connection with the exercise of the Rights, National Financial Services LLC (NFS), an affiliate of Fidelity and a broker for the Plan, received a commission equal to 2.9 cents per Rights share. The commission was charged to the Invested Participants' Accounts. According to the Applicant, NFS was retained by the Committee to provide brokerage services to the Plan that were required for the sale of the Rights on the open market. In addition, the Applicant represents that the Committee approved the compensation paid to NFS, and it deemed such compensation to be "reasonable."²⁹

Fidelity also attempted to sell unexercised Rights on the open market between October 1 and October 9, 2012. Rights that remained unsold at the close of the market on October 9, 2012, expired.

16. An Invested Participant could elect to sell rather than exercise the Rights allocated to his or her Plan Account. In order to sell a Right, an Invested Participant was required to (a) contact a Fidelity representative, and (b) specify the

²⁹ The Applicant represents that the brokerage services and commissions received by NFS from the Plan in connection with the exercise of the Rights are statutorily exempt under section 408(b)(2) of the Act and the applicable regulations. However, the Department is expressing no opinion in this proposed exemption on whether the requirements of the statutory exemption have been

percentage (in whole amounts) of the Rights the Invested Participant desired to sell. The selling period for Invested Participants ran from September 13, 2012, through October 1, 2012.³⁰ During this time period, 20 Invested Participants affirmatively elected to sell their Rights and 734 Rights were sold. The Rights were traded on the Nasdaq under the ticker symbol "LVNAR." Fidelity sold a total of 20,269 of the remaining Rights for 877 Invested Participants between October 2 and October 5, 2012, for a total selling price of \$257,130.70. (One Invested Participant had both an exercise and a sale.)

17. The Applicant has requested an administrative exemption from the Department for: (a) the acquisition of the Rights by the Plan in connection with the Rights Offering; and (b) the holding of the Rights by the Invested Participants' Accounts during the subscription period of the Rights Offering.

The Applicant represents that the Rights acquired by the Plan satisfy the definition of "employer securities," pursuant to section 407(d)(1) of the Act. However, as the Rights are not stock or a marketable obligation, such Rights do not meet the definition of "qualifying employer securities," as set forth in section 407(d)(5) of the Act. Accordingly, the subject

met.

transactions constitute an acquisition and holding by the Plan, of employer securities that are not qualifying employer securities, in violation of section 407(a) of the Act, for which the Applicant has requested relief from sections 406(a)(1)(E), 406(a)(2), and 407(a)(1)(A) of the Act. In addition, because the subject transactions raise conflict of interest issues by Plan fiduciaries, the Applicant has requested exemptive relief from the prohibitions of section 406(b)(1) and 406(b)(2) of the Act. If granted, the proposed exemption will be effective for the period beginning August 9, 2012, through and including October 9, 2012.

18. The Applicant represents that the proposed exemption is administratively feasible because it involves the acquisition and short-term holding of Rights by the Invested Participants' Accounts and the one-time exercise of the Rights, as directed by the Invested Participants. In this regard, the Applicant explains that the Plan had already passed through certain rights to the Invested Participants with respect to the employer securities held in such Invested Participants' Accounts. According to the Applicant, voting rights with respect to the employer securities had been passed through to the Invested Participants. Therefore, the Committee determined that it would be consistent with these other rights to pass through the

decision on whether to exercise or sell the Rights to the Invested Participants.

In addition, the Applicant represents that the proposed exemption is in the interests of the Plan and the participants and beneficiaries because it allowed Invested Participants, who exercised their Rights, to purchase shares of Liberty Ventures Stock at a significant discount. Had the Plan not engaged in the subject transactions, the Plan and the Invested Participants would have been at a disadvantage compared with outside shareholders. Therefore, the Committee determined that Invested Participants should be permitted to exercise or sell the Rights.

Finally, the Applicant explains that the proposed exemption is protective of the Plan and the participants and beneficiaries because all Invested Participants were notified, in advance of the recapitalization and the subsequent transactions, of the procedure for instructing Fidelity of such Invested Participants' desires with respect to the Rights. In addition, all instructions given by the Invested Participants to Fidelity were properly executed.

19. In summary, the Applicant represents that the subject transactions satisfy the statutory criteria of section 408(a) of the Act because:

(a) The receipt of the Rights by the Invested

Participants' Accounts occurred in connection with the Rights Offering, and the Rights were made available by LIC to all shareholders of LIC Stock, including the Invested Participants' Accounts;

(b) The acquisition of the Rights by the Invested Participants' Accounts resulted from an independent corporate act of LIC;

(c) Each shareholder of LIC Stock, including each Invested Participant's Account, received the same proportionate number of Rights, and this proportionate number of Rights was based on the number of shares of the LIC Stock held by each such shareholder;

(d) The Rights were acquired pursuant to, and in accordance with, provisions under the Plan for individually-directed investment of the Invested Participants' Accounts, all or a portion of whose Accounts in the Plan held the LIC Stock;

(e) The decision with regard to the disposition of the Rights by an Account was made by the Invested Participant whose Account received the Rights. Notwithstanding the above, if any of the Invested Participants failed to give instructions as to the disposition of the Rights received in the Rights Offering, such Rights were sold on the Nasdaq and the proceeds from the sale were distributed to such Invested Participant's Account; and

(f) No brokerage fees, commissions, or other fees or expenses were paid by the Plan or by the Invested Participants' Accounts to any broker related to Fidelity, the Plan trustee, or to LMC or LIC in connection with the acquisition, holding or sale of the Rights.

NOTICE TO INTERESTED PERSONS

The persons who may be interested in the publication in the Federal Register of the Notice of Proposed Exemption (the Notice) include Invested Participants whose Accounts in the Plan were invested in LIC Stock at the time of the Offering.

It is represented that all such interested persons will be notified of the publication of the Notice by first class mail, to each such interested person's last known address within fifteen (15) days of publication of the Notice in the Federal Register. Such mailing will contain a copy of the Notice, as it appears in the Federal Register on the date of publication, plus a copy of the Supplemental Statement, as required, pursuant to 29 CFR 2570.43(a)(2), which will advise all interested persons of their right to comment and to request a hearing. All written comments and/or requests for a hearing must be received by the Department from interested persons within 45 days of the publication of this proposed exemption in the Federal Register.

All comments will be made available to the public.

Warning: Do not include any personally identifiable information (such as name, address, or other contact information) or confidential business information that you do not want publicly disclosed. All comments may be posted on the Internet and can be

retrieved by most Internet search engines.

FOR FURTHER INFORMATION CONTACT: Ms. Blessed Chuksorji-Keefe of the Department, telephone (202) 693-8567. (This is not a toll-free number.)

GENERAL INFORMATION

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which, among other things, require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries,

and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 27th day of March, 2014.

Lyssa E. Hall, Director
Office of Exemption
Determinations
Employee Benefits Security
Administration
U.S. DEPARTMENT OF LABOR

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